IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Writ Petition No. 584 of 2004.

Judgment reserved on 1.1.2007.

Date of decision 9.1.2007.

State of Himachal Pradesh and others …Petitioners.

Versus

Dila Ram and others …..Respondents.

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the Petitioners: Mr. Rajan Dewan, Addl. A.G.

For Respondent No. 1: Mr. H.K.Paul, Advocate.

Dev Darshan Sud, J.

This writ petition has been preferred by the State of Himachal Pradesh through the Principal Secretary, IPH, to the Government of Himachal Pradesh against the judgment and award passed by the Labour Court holding the retrenchment of the respondent as being illegal and further ordering that the petitioner be reinstated with continuity in service.

A reference was made to the Labour Court under Section 10 of the Industrial Disputes Act, 1947 (hereafter referred to as the Act) in the following terms:

> **"Whether the retrenchment of service of Sh. Dila Ram workman S/O Sh. Govind Ram w.e.f.31.1.1998 by the Executive Engineer, Irrigation and Public Health Division, Arki, Distt. Solan is legal**

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[1] *Whether reports of Local Papers may be allowed to see the judgment?*

> **and justified. If not, what relief of service benefits, seniority compensation Sh. Dila Ram Workman is entitled to?"**

Three issues were framed by the Labour Court, namely:

1. **Whether the termination of services of the petitioner by the respondent w.e.f. 31.1.1998 is illegal and unjustified and if so, its effect? OPP.**
2. **Whether the reference is not maintainable? OPR.**
3. **Whether the reference suffers from delay and laches? OPR.**
4. **Relief.**

On the first issue, the learned Court below held that the services of the petitioner had been dispensed with without following the provisions of Section 25-G of the Act. On the second issue, whether reference is maintainable or not, the plea was specifically given up by the State before the Labour Court.

On Issue No.3 the learned Court held as under:-

> **"Issue No.3. The petitioner was retrenched on 31.1.1998. Representations Ex.PA and Ex.PE were submitted by him on 18.7.1998 and 15.3.1999. The reference was made on 29.8.2001. Keeping in view this sequence of events, it cannot be said that the reference suffers from delay**

> **and laches. Accordingly, this issue is also held against the respondent".**

Learned Additional Advocate General has confined his arguments to the question of maintainability of the petition on the ground of delay which has been occasioned. I am unable to accept this contention.

The Industrial Disputes Act does not prescribe a period of limitation as held by the Hon'ble Supreme Court in Ajaib Singh v. Sirhind Cooperative Marketing-cum-Processing Service Society Ltd. And Another ,(1999) 6 SCC 82), has held:

> **"10. It follows, therefore, that the provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or**

dismissal. The court may also in appropriate cases direct the payment of part of the back wages instead of full back wages. Reliance of the learned counsel for the respondent management on the Full Bench judgment of the Punjab and Haryana High Court in *Ram Chander Morya v. State of Haryana* (1999) 1 SCT 141 (P&H): ILR (1999) 1 P&H 93 (FB) is also of no help to him. In that case the High Court nowhere held that the provisions of Article 137 of the Limitation Act were applicable in the proceedings under the Act. The Court specifically held " neither any limitation has been provided nor any guidelines to determine as to what shall be the period of limitation in such cases". However, it went on further to say that

" reasonable time in the cases of labour for demand of reference or dispute by appropriate Government to labour tribunals will be five years after which the Government can refuse to make a reference on the ground of delay and laches if there is no explanation to the delay".

We are of the opinion that the Punjab and Haryana High Court was not justified in prescribing the limitation for getting the reference made or an application under Section 33-C of the Act to be adjudicated. It is not the function of the court to prescribe the limitation where the legislature in its wisdom had thought it fit not to prescribe any period. The courts

> **admittedly interpret law and do not make laws. Personal views of the Judges presiding over the Court cannot be stretched to authorize them to interpret law in such a manner which would amount to legislation intentionally left over by the legislature. The judgment of the Full Bench of the Punjab and Haryana High Court High Court has completely ignored the object of the Act and various pronouncements of this Court as noted hereinabove and thus is not a good law on the point of the applicability of the period of limitation for the purposes of invoking the jurisdiction of the courts/boards and tribunal under the Act."**

This principle of law has been subsequently reiterated by the Hon'ble Supreme Court in Management, Sudamdih Colliery of B.C.C.L Vs. Their Workmen, AIR 2006 SC 946. Their Lordships of the Supreme Court while reaffirming the ratio laid in S.M. Nilajkar and others Vs. Telecom District Manager, Karnataka (2003(4) SCC 27 and Nedungadi Bank Limited Vs. K.P. Madhavankutty and others, AIR 2000 SC 839, held that although there is no bar of limitation prescribed by the Industrial Disputes Act for making a reference to the Labour Court, nonetheless unexplained long delay would be a bar under Section 10 of the Act. Learned counsel appearing for the respondent has also relied upon a decision in Sapan Kumar Pandit Vs. UP State Electricity Board and others,

(2001) 6 SCC 222, in support of the contention that no limitation applies to reference under Section 10 of the Act. This proposition of law cannot be disputed. The learned Additional Advocate General has relied upon the decision in Managaement, Sudamdih Colliery of B.C..C.L. Vs. Their Workmen, AIR 2006 SC 946 (supra), as also the decision of a Division Bench of this Court in Municipal Council Paonta Sahib Vs. State of Himachal Pradesh and others, CWP No.398 of 2001, to urge that in the present case, the ratio of the two judgments would clearly bar reference under the Act and that the Labour Court had no jurisdiction to deal with the matter.

I have gone through these judgments and I find myself unable to accept the contention made on behalf of the petitioner. In *Municipal Council Paonta Sahib's* case, this Court was dealing with the reference wherein the services of the workman were terminated in October, 1988 and reference was made in February, 2001. This Court after following the judgments of the Hon'ble Supreme Court held that:-

> "In the present case, the lapse of time had caused fading of the dispute. It had not been kept alive by the respondent workman and hence, no industrial dispute could be said to have existed or apprehended. The action of making reference by the appropriate Government, therefore, cannot be said to be legal and valid and reference deserves to be quashed. The petition is accordingly allowed. Reference made by the appropriate Government is hereby quashed. In the facts and circumstances of the case, there shall be no order as to costs."

In the present case, the services of the respondent were retrenched on 31.1.1998. Representations Ext.PA and Ext.PE were submitted by him on 18.7.1998 and 15.3.1998 and ultimately the reference was made on 29.8.2001. Obviously, between 15.3.1999 and 29.8.2001, the matter was in conciliation proceedings. It cannot thus be said that there has been unexplained delay or that no dispute existed.

In these circumstances, it cannot be held that the respondent was raising a stale claim or that he had not kept the dispute alive which would require reference to be made under Section 10 of the Act.

No other plea except the delay and latches was urged before me.

The writ petition is, therefore, dismissed with no order as to costs.

January 9, 2007 **(Dev Darshan Sud)**
PC. **Judge.**